

The only issues before the Board on this appeal are whether the Board has jurisdiction to review the Judge's preliminary hearing findings and, if so, whether claimant is entitled to receive preliminary hearing benefits for the pneumonia she developed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file compiled to date and considering the parties' arguments, the Board finds and concludes the Order for Compensation should be affirmed.

The finding that claimant's pneumonia is compensable under the Workers Compensation Act is subject to review from a preliminary hearing order. Whether an injury (or condition) arose out of and in the course of employment is an issue that the Act specifically states is subject to review at this juncture of the claim.¹

Respondent employed claimant as a coin roller. Claimant lifted and emptied heavy bags of coins into a machine that would roll the coins, which claimant then boxed and stacked onto pallets.

Towards the end of the day on Friday, February 14, 2003, claimant experienced back pain, which she reported to her boss. Earlier that day claimant had been dumping 50-pound bags of quarters into the coin roller machine. Over the weekend, claimant used heat and ice to treat her symptoms. Claimant reported to work the next week and on Friday, February 21, 2003, again experienced back pain after dumping approximately four pallets, or 200 bags, of the 50-pound bags of quarters.

Respondent referred claimant for medical treatment. On February 24, 2003, claimant initially saw Dr. Lynn Curtis, who then diagnosed rib/thoracic strain. Later, the doctor also diagnosed bronchitis and pneumonia. According to Dr. Curtis, claimant's physical injury altered claimant's ability to breathe and, therefore, decreased her lung ventilation, which resulted in claimant developing pneumonia.

During her medical treatment, claimant also saw Dr. C. Michael West. Dr. West believes claimant experienced a muscle strain that led to splinting of the chest, which may have contributed to her pneumonia. Claimant also saw Dr. Ashish Singh, who believes it is more likely that claimant developed pneumonia in the left side of her chest, which resulted in chest pain that claimant mistakenly attributed to her work.

Considering claimant's testimony and the various medical opinions presented at the preliminary hearing, the Board concludes it is more probably true than not that claimant developed pneumonia as a direct and natural consequence of the physical injuries she sustained at work. Accordingly, claimant is entitled to receive workers compensation benefits for the pneumonia.

¹ K.S.A. 44-534a(a)(2).

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment **every natural consequence that flows from the injury**, including a new and distinct injury, **is compensable if it is a direct and natural result of a primary injury**. . . .² (Emphasis added.)

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Board affirms the May 14, 2004 preliminary hearing Order for Compensation entered by Judge Brad E. Avery.

IT IS SO ORDERED.

Dated this ____ day of June 2004.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, Syl. ¶ 1, 506 P.2d 1175 (1973).

³ K.S.A. 44-534a(a)(2).